

No. 12374

United States
Court of Appeals
For the Ninth Circuit.

ROBERT L. CANNON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
Southern District of California,
Central Division.

FILED

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PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Certificate of Clerk.....	70
Defendant's Instruction No. 14.....	4
Defendant's Instruction No. 15.....	3
Indictment	2
Instructions to the Jury.....	5, 55
Judgment and Commitment.....	28
Minute Order Dated Feb. 7, 1949.....	3
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	29
Notice of Designation of Portion of Transcript to Be Printed.....	73
Points Relied Upon in Appeal.....	72
Reporter's Transcript of Testimony.....	34
Stipulation and Order.....	32, 33
Stipulation Re: Designation of the Record and Praecipe	31
Verdict	27

INDEX

PAGE

Witness, Defendant's:

Cannon, Robert L.

—direct 45

—cross 46

Witness, Government's:

Winchester, Myrtle

—direct 39

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In the United States District Court in and for the
Southern District of California, Central Division

No. 20507

[Selective Service Act of 1948—Failure to register]

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT L. CANNON,

Defendant.

INDICTMENT

The grand jury charges:

Defendant Robert L. Cannon, a male person within the class required to register for selective service under the Selective Service Act of 1948, on or about September 9, 1948, and at all times thereafter, in Los Angeles County, California, within the Central Division of the Southern District of California, did knowingly fail and neglect to perform a duty required of him under said act and the regulations promulgated thereunder in that he knowingly failed and neglected to register as required by said act and regulations.

A True Bill:

/s/ A. S. AHLWEDE,

Foreman.

/s/ JAMES M. CARTER,

U. S. Attorney.

RHK:AH

[Endorsed]: Filed Jan. 19, 1949.

At a stated term, to wit: The February Term, A.D. 1949, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the Seventh day of February in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable: Wm. C. Mathes,
District Judge.

[Title of Cause]:

For plea; A. P. Moran, Ass't U. S. Atty., appearing as counsel for Gov't; J. D. Randles, Esq. appearing as counsel for defendant, who is present on bond; reading of Indictment is waived and defendant pleads not guilty. Court orders cause set for trial March 8, 1949, 10 AM, with a jury. [3]

DEFENDANT'S INSTRUCTION NO. 15

Ladies and Gentlemen of the Jury:

The Court further instructs you that because of the First Amendment of the Constitution of the United States, which, as heretofore you have been instructed, reads in part as follows:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,”

and it having been stipulated that this defendant's

failure to register was due to the exercise of his religious motives, you are instructed that so far as this defendant is concerned, the Selective Service Act of 1948 is unconstitutional and you should bring in a verdict of not guilty.

Given:

.....

Judge. [4]

DEFENDANT'S INSTRUCTION NO. 14

Ladies and Gentlemen of the Jury:

You are instructed that when a matter has been stipulated to by counsel representing the Government and the defendant, it is no longer an issue in this case. In that connection, I would instruct that it has been stipulated to: First, that the defendant did not register under the Selective Service Act of 1948, and it has been further stipulated that his non-registration was because of his exercise of his religious convictions.

Given:

.....

Judge.

[Endorsed]: Filed June 2, 1949. [5]

[Title of District Court and Cause.]

INSTRUCTIONS TO THE JURY

(Given June 2, 1949.)

/s/ WM. C. MATHES,
Judge. [6]

[1]

Members of the Jury:

You have heard the evidence and the argument. Now it is the duty of the Court to instruct you as to the law governing the case. It is your duty, as jurors, to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

[Form Cr. 1—Civ. 1]

[MATHES, J.]

[Province of the Court]

[2]

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the public expect that you will carefully and impartially consider all the evidence, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and does not create any presumption or permit any inference of guilt.

[Form Cr. 2]

[Province of the Jury]

[MATHES, J.]

[Indictment an Accusation]

[3]

The law presumes a defendant to be innocent of any crime. This presumption of innocence continues throughout the trial, and has the weight and effect of evidence in favor of the accused. You must consider the evidence in the light of this presumption. The presumption of innocence is sufficient to acquit a defendant, unless the presumption is outweighed by evidence satisfying the jury beyond a reasonable doubt of the defendant's guilt.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the

state of evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs. A defendant is not to be convicted on mere suspicion or conjecture.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jurors do not feel satisfied to a moral certainty that a defendant is guilty of the charge.

[Presumption of Innocence]

[Form Cr. 3]

[Burden of Proof]

[MATHES, J.]

[Reasonable Doubt]

[4]

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence—such as the testimony of an eye witness. The other is circumstantial

evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

In order to justify a verdict of guilty based in whole or in part upon circumstantial evidence, the facts in the chain of circumstances shown by the evidence must be consistent with the guilt of the accused, and inconsistent with every reasonable supposition of innocence.

If the facts and circumstances shown by the evidence are as consistent with innocence as with guilt, the jury should acquit the accused. [10]

[Form Cr. 4]

[Direct Evidence]

[MATHES, J.]

[Circumstantial Evidence]

[5]

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must accept the stipulation as evidence and regard that fact as conclusively proved.

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted or stipulated, and all applicable presump-

tions stated in these instructions. Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from facts which you find have been proved, such inferences as seem justified in the light of your experience.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

A presumption is an inference which the law requires the jury to make from particular facts, in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary; but unless so outweighed the jury are bound to find in accordance with the presumption. [11]

[Evidence]

[Stipulations]

[Form Cr. 5]

[Inferences]

[Mathes, J.]

[Presumptions]

[6]

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. A witness is presumed to speak the truth. But this presumption may be outweighed by the

manner in which the witness testifies, by the character of the testimony given, or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you may think it deserves. [12]

[Form Cr. 6—Civ. 6] [Credibility of Witnesses]
[MATHES, J.] [Discrepancies in Testimony]

[6-A]

All evidence relating to any admission or incriminatory statement claimed to have been made by a defendant outside of court should be considered with caution and weighed with great care. [13]

[Form Cr. 6-A]

[MATHES, J.]

[Admissions]

[6-B]

A confession is an admission by a defendant of all the facts constituting the crime charged. The very nature of a confession requires that the circumstances surrounding it be subjected to careful scrutiny in order to determine surely whether it was voluntarily made.

If the evidence does not convince beyond all reasonable doubt that a confession was made voluntarily, the jury should disregard it entirely. On the other hand, if the evidence does show beyond a reasonable doubt that a confession was voluntarily made by a defendant, the jury should consider the confession as evidence for all purposes. [14]

[Form Cr. 6-E]

[MATHES, J.]

[Confession]

[7]

A witness may be impeached or discredited by contradictory evidence; or by evidence that at other times the witness has made statements which are

inconsistent with the witness' present testimony.

If you believe any witness has been impeached, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves. [15]

[Impeachment—

[Form Cr. 7—Civ. 7] inconsistent statements—
[MATHES, J.] falsus in uno falsus in omnibus]

[8]

“In [the] trial of all persons charged with the commission of offenses against the United States . . . the person charged shall, at his own request, be a competent witness. [But] His failure to make such request shall not create any presumption against him.” [18 U.S.C., § 3481.]

[That is to say, the law does not compel a defendant to take the witness stand and testify, and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify. [6]

[Form Cr. 8]

[MATHES, J.] [Failure of Accused to Testify]

[8-A]

A defendant who wishes to testify, however, is a competent witness; and the defendant's testimony is to be judged in the same way as that of any other witness. [17]

[Form Cr. 8-A]

[MATHES, J.]

[Credibility of Accused]

[9]

In every crime there must exist a union or joint operation of act, or failure to act, and intent. The burden is always upon the prosecution to prove both act, or failure to act, and intent beyond a reasonable doubt.

A person is held to intend to do or fail to do everything such person knowingly does in fact do or fail to do. A person is also held to intend all the natural and probable consequences of whatever such person knowingly does or fails to do. That is to say, the law assumes every person to intend the consequences which one standing in like circumstances and possessing like knowledge would reasonably expect to result from acts knowingly done or knowingly omitted.

An act or failure to act is done knowingly if done voluntarily and purposely, and not because of mistake or inadvertence or other innocent reason. [18]

[Form Cr. 9-A]

[MATHES, J.]

[Omission and Intent]

[9-A]

With respect to lesser offenses, if it be shown that a person has voluntarily committed an act denounced by law as a crime, intent may be presumed from the mere doing of the forbidden act.

But with respect to major crimes, such as charged in this case, proof of specific intent is required before there can be a conviction. Specific intent, as the term suggests, means more than a mere general intent to commit the act.

A person who knowingly does an act which the law forbids, or who knowingly fails to do an act which the law commands, purposely intending to violate the law or recklessly disregarding the law, acts with specific intent. [19]

[Form Cr. 9-B]

[MATHES, J.]

[Specific Intent]

[9-B]

It is not necessary for the prosecution to prove knowledge of the accused that a particular act or failure to act is a violation of law. Nor is ignorance of the law available as a defense to a person who has committed a crime. Everyone is presumed to have knowledge of what the law forbids and what the law commands. However, evidence that the accused acted or failed to act because of ignorance of the law, is to be considered in determining

whether or not the accused acted or failed to act with specific intent as charged. [20]

[Form Cr. 9-C]

[MATHES, J.]

[Ignorance of the Law]

[9-C]

Intent and motive should never be confused. Motive is that which prompts a person to act. Intent refers only to the state of mind with which the act is done.

Personal advancement and financial gain are two well-recognized motives for much of human conduct. These laudable motives may prompt one person to voluntary acts of good, another to voluntary acts of crime.

Good motive is never a defense where the act done is a crime. If a person does intentionally an act which the law denounces as a crime, motive is immaterial. [21]

[Form Cr. 9-D]

[MATHES, J.]

[Motive]

[10]

Intent may be proved by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eye-witness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do

may indicate intent or lack of intent to commit the offense charged.

Intent may be inferred from all the evidence in the case, including any acts done and statements made by the accused. The jury should consider all the facts and circumstances in evidence which may aid determination of the issue as to intent. [22]

[Form Cr. 10]

[MATHES, J.]

[Proof of Intent]

[11]

It is charged in the indictment that on or about September 9, 1948, and at all times thereafter, in Los Angeles County, California, the defendant, Robert L. Cannon, was a male person within the class required to register for selective service under the Selective Service Act of 1948, and that the defendant did knowingly fail and neglect to perform a duty required of him under said act and the regulations promulgated thereunder, in that he then and there knowingly failed and neglected to register as required by said act and said regulations.

[12]

Section 453 of Title 50 of the United States Code provides in part that:

“ . . . it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registra-

tion, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder." [Act, Title I, § 3, 62 Stat. 605.]

[12-A]

Proclamation No. 2799, issued July 20, 1948, by the President of the United States, provides in part that:

1. The registration of male citizens of the United States and other male persons residing in the United States who shall have attained the eighteenth anniversary of the day of their birth and who shall have not attained the twenty-sixth anniversary of the day of their birth shall take place . . . between the hours of 8:00 a.m. and 5:00 p.m. on the day or days hereinafter designated for their registration, as follows: * * *

(e) Persons born in the year 1926 shall be registered on Wednesday, the 8th day of September, 1948, or on Thursday, the 9th day of September, 1948.

* * *

2. (a) Every male citizen of the United States . . . who shall have attained the eighteenth anniversary of the day of his birth and who shall have not attained the twenty-sixth anniversary of the day of his birth on the day or any of the days fixed

herein for his registration is required to and shall on that day or any of those days present himself for and submit to registration before a duly designated registration official or selective service local board having jurisdiction in the area in which he has his permanent home or in which he may happen to be on that day or any of those days.

* * *

3. Every person subject to registration is required to familiarize himself with the rules and regulations governing registration and to comply therewith." [13 F.R. 4173] [25]

[12-B]

Section 462(a) of Title 50 of the United States Code provides in part that:

"Any . . . person charged . . . with the duty of carrying out any of the provisions of . . . [The Selective Service Act of 1948], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, . . . or who otherwise evades or refuses registration . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this [Act], or rules, regulations, or directions made pursuant to this Act . . ." shall be guilty of an offense.

[12-C]

The Selective Service Act of 1948 was passed by the Congress of the United States pursuant to authority granted by the Federal Constitution to provide for our national defense.

You are not to be concerned with the wisdom or desirability of the Selective Service Act of 1948. It is the law of the land and, as jurors, you must be governed by it and apply it in arriving at an impartial verdict in this case. [27]

[12-D]

Persons who, by reason of religious training and belief, are conscientiously opposed to participation in war in any form, including duly ordained ministers of religion and students preparing for the ministry, are not exempted from registration under the Selective Service Act of 1948.

Once they are registered, however, such persons may be exempted from training and service under the Act. In this connection § 456(j) of Title 50 of the United States Code provides in part that: "Nothing contained in [the Selective Service Act of 1948] . . . shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

But in order to avail themselves of such exemp-

tion from training and service, the law provides that conscientious objectors must first register as required by the Act. [28]

[13]

Thus, there are two essential elements of the offense charged in the indictment:

First: Whether the defendant was, at the time and place alleged in the indictment, a male person within the class required to register for selective service under the Selective Service Act of 1948; and

Second: Whether the defendant knowingly failed and neglected to register as required by said Act and the regulations promulgated thereunder.

As stated before, the burden is upon the prosecution to prove beyond all reasonable doubt every essential element of the crime charged. [29]

[14]

You will note that the omission or failure to act charged in the indictment is alleged to have been “knowingly” done.

The purpose of adding the word “knowingly” to the statute was to insure that no one would be convicted because of mistake or inadvertence or other innocent reason. [30]

[14-A]

The First Amendment to the Federal Constitution declares that:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The defendant's religious beliefs are within the protection of the First Amendment, but the mere requirement of registration under the Selective Service Act of 1948 does not unconstitutionally infringe the free exercise by the defendant of his religious beliefs. The United States has the constitutional power to require the registration of all male citizens between the ages of eighteen and twenty-six, as the Selective Service Act of 1948 provides, and the exercise of such power in accordance with the Act does not constitute an abridgement of the freedom of religion of any person. [31]

[14-B]

In the words of the late Mr. Justice Cardozo of the United States Supreme Court:

“Never in our history has the notion been accepted, . . . that acts . . . indirectly related to service in the camp or field are so tied to the practice of religion as to be exempt, in law or in morals, from regulation by the state. . . .

“Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law.”

[Concurring opinion of Mr. Justice Cardozo in *Hamilton v. Regents*, 293 U. S. 245, 267-268 (1934).]

[15]

The law of the United States permits the judge to comment to the jury on the evidence in the case. Such comments are only expressions of the judge's opinion as to the facts; and the jury may disregard them entirely, since the jurors are the sole judges of the facts. [33]

[Form Cr. 15—Civ. 15]
[MATHES, J.]

[Court's Comments
on Evidence]

[16]

During the course of a trial, I occasionally ask questions of a witness, in order to bring out facts

not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts. [34]

[Form Cr. 16—Civ. 16]

[MATHES, J.]

[Court's Questions

to Witnesses]

[16-A]

It is the duty of the Court to admonish an attorney who, out of zeal for his cause, does something which is not in keeping with the rules of evidence or procedure.

You are to draw no inference against the side to whom an admonition of the Court may have been addressed during the trial of this case. [35]

[Form Cr. 16-A—Civ. 16-A]

[MATHES, J.]

[Court's Comments

to Counsel]

[17]

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the Court, and is not to be considered by the jury in arriving at an impartial verdict as to the guilt or innocence of the accused.

[Form Cr. 17]

[MATHES, J.]

[Punishment]

[17-A]

The defendant is not on trial for any act or conduct not alleged in the indictment. [37]

[Form Cr. 17-C]

[MATHES, J.] [Consider only offense charged]

[18]

The verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion on the case or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become

involved, and the juror may later hesitate to recede from an announced position even when shown it is incorrect. You are not partisans. You are judges—judges of the facts. Your sole interest is to ascertain the truth. You will make a worthwhile contribution to the administration of justice if you arrive at an impartial verdict in this case.

[Form Cr. 18—Civ. 18]	[Verdict, Unanimous]
[MATHES, J.]	[Duty to Deliberate]

[19]

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted and give it a reasonable and fair construction.

If the accused be proved guilty, say so. If not proved guilty, say so. Remember at all times that a defendant is entitled to acquittal if any reasonable doubt remains in your minds.

Remember also that the question before you can never be: will the Government win or lose the case? The Government always wins when justice is done, regardless of whether the verdict be guilty or not guilty.

If it becomes necessary during your deliberations to communicate with the Court, you may send a

note by the bailiff. But bear in mind you are not to reveal to the Court or any person how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached an unanimous verdict. [39]

[Form Cr. 19]

[Judging the Evidence]

[MATHES, J.] [Jury's Communications to Court]

[20]

Upon retiring to the jury room, you will select one of your number to act as foreman. The foreman will preside over your deliberations and be your spokesman in court.

A form of verdict has been prepared for your convenience.

[Form of verdict read.]

You will take this form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreman fill in, date and sign the form to state the verdict upon which you agree, and then return with your verdict to the court room. [40]

[Election of Foreman]

[Form Cr. 20]

[Form of Verdict]

[MATHES, J.]

[Single Defendant]

[Endorsed]: Filed June 2, 1949.

[Title of District Court and Cause.]

VERDICT

We, the jury in the above entitled cause, find the defendant, Robert L. Cannon, Guilty as charged in the indictment.

Los Angeles, California.

June 2, 1949.

/s/ THOMAS B. PERRU,

Foreman of the Jury [41]

[Endosed]: Filed June 2, 1949.

District Court of the United States for the Southern
District of California, Central Division

No. 20507—Criminal. Indictment [1 Count—Selective Service Act of 1948—Failure to Register]

UNITED STATES OF AMERICA

vs.

ROBERT L. CANNON

JUDGMENT AND COMMITMENT

On this 9th day of June, 1949, came the attorney for the government and the defendant appeared in person and with his attorney, J. D. Randels, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and finding of guilt by the jury of the offense of having on or about September 9, 1948, failed to register as required by the Selective Service Act of 1948, as charged in the indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years in an institution to be se-

lected by the Attorney General of the United States or his authorized representative for the offense charged in the indictment.

It Is Adjudged that execution be stayed until 2 P.M. on June 17, 1949.

It Is Further Adjudged that the bail of the defendant be exonerated upon surrender of the defendant to the United States Marshal at or prior to 2 P.M. on June 17, 1949.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ WM. C. MATHES,

United States District Judge.

By /s/ LOUIS J. SOMERS,

Deputy Clerk.

/s/ EDMUND L. SMITH,

Clerk.

Filed June 9, 1949. [42]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Comes now the above-named defendant and appellant and files this his Notice of Appeal from the above-entitled Court to the Circuit Court of Appeal for the Ninth Circuit from judgment as follows, to-wit:

The name of the appellant is Robert L. Cannon, whose address is 417 East 30th Street, Los Angeles, California. His attorney's name and address is James D. Randles, 818 Transamerica Building, Los Angeles 14, California.

The appellant has been convicted of the crime of violating the Selective Service Act of 1948, Title 50, Section 453.

The concise statement of judgment or order giving date and any sentence:

Appellant was convicted by a jury on June 2, 1949, and was on June 9, 1949, given a sentence of imprisonment for three (3) years in an institution to be selected by the Attorney General of [43] the United States, or his authorized representative.

That this appellant is now on bail, the execution of said sentence having been stayed to June 17, 1949.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeal for the Ninth Circuit from the above stated judgment.

Dated, this 10th day of June, 1949.

/s/ ROBERT L. CANNON,

Appellant.

/s/ JAS. D. RANDLES,

Attorney for Appellant.

[Endorsed]: Filed June 10, 1949. [44]

[Title of District Court and Cause.]

STIPULATION RE: DESIGNATION OF THE
RECORD AND PRAECIPE

It Is Hereby Stipulated between the attorneys for the parties in the above-entitled action that the following shall be the record on appeal and the Clerk is hereby requested to prepare same:

1. Indictment.
2. Plea.
3. Verdict of the jury.
4. Judgment and commitment.
5. Instructions, as read.
6. Further requested instructions.
7. Notice of appeal.
8. This Stipulation, and Praecipe.
9. Reporter's Transcript.

Dated, July 15, 1949.

JAMES M. CARTER,
United States Attorney.

By /s/ SANDER L. JOHNSON,
Attorney for Plaintiff and
Appellee. [46]

/s/ JAS. D. RANGLES,
Attorney for Defendant and
Appellant.

[Endorsed]: Filed June 15, 1949. [47]

[Title of District Court and Cause.]

STIPULATION AND ORDER

It Is Hereby Stipulated, by and between James D. Randles, attorney for appellant, and James M. Carter, attorney for the United States, that the appellant may have until to and including the 10th day of August, 1949, in which to prepare and certify the record on appeal in the above-entitled matter.

Dated, this 15th day of July, 1949.

JAMES M. CARTER,

United States Attorney.

By /s/ SANDER L. JOHNSON,

Attorney for Plaintiff and
Appellee.

/s/ JAS. D. RANDLES,

Attorney for Defendant and
Appellant. [48]

ORDER

Upon reading the above Stipulation, it is so ordered.

/s/ WM. C. MATHES,

Judge of the District Court.

Dated, July 19, 1949.

[Endorsed]: Filed July 20, 1949. [49]

[Title of District Court and Cause.]

STIPULATION AND ORDER

Whereas; The deputy United States District Attorney who represented the plaintiff in the trial of the above-entitled matter is absent from the city and will not return for a period of approximately thirty days and because his assistance is necessary in the preparation of the record on appeal,

It Is Hereby Stipulated, by and between James D. Randles, attorney for appellant, and James M. Carter, attorney for the United States, that the appellant may have to and including the 10th day of October, 1949, in which to have prepared and certified the record on appeal in the above-entitled matter.

Dated, this 4th day of August, 1949.

JAMES M. CARTER,

United States Attorney.

By /s/ NORMAN W. NEUROM,

Attorney for Plaintiff and

Appellee.

/s/ JAS. D. RANGLES,

Attorney for Defendant and

Appellant. [50]

ORDER

Upon reading the above Stipulation, it is so ordered.

/s/ LEON R. YANKWICH,

Judge of the District Court.

Dated, August 4th, 1949.

[Endorsed]: Filed Aug. 4, 1949. [51]

United States District Court in and for the Southern
District of California, Central Division

No. 20507 Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT L. CANNON,

Defendant.

REPORTER'S TRANSCRIPT OF TESTIMONY
AND PROCEEDINGS OF TRIAL

Honorable William C. Mathes, Judge presiding.

Appearances:

For the Government:

JAMES M. CARTER,

United States Attorney; by

SANDER L. JOHNSON,

Assistant United States Attorney.

For the Defendant:

J. D. RANGLES, Esq.,

Transamerica Building,

Seventh and Olive Streets,

Los Angeles 14, California. [1*]

June 1, 1949, 10:00 O'clock A.M.

(A jury having been heretofore selected and
sworn, the following proceedings were had:)

(Case called by clerk.)

* Page numbering appearing at top of page of original Reporter's
Transcript of Record.

Mr. Johnson: Ready for the government.

Mr. Randles: Ready for the defendant.

The Court: I understand a jury has been impaneled in this case by Judge Weinberger. Judge Weinberger was called out of the city today on account of a death in his family, and I am handling the criminal matters in his absence.

Do you gentlemen wish to stipulate that this trial may proceed before me with same effect as if it had proceeded before Judge Weinberger?

Mr. Johnson: The government so stipulates, your Honor.

Mr. Randles: The defendant will so stipulate, your Honor.

The Court: Is that satisfactory to you, Mr. Cannon?

Defendant Cannon: Yes.

The Court: Ladies and gentlemen, you have been impaneled and sworn as jurors to try the case of United States of America, plaintiff, vs. Robert L. Cannon, defendant.

Is it stipulated, first, that all members of the jury are in their places?

Mr. Randles: Yes, sir. [2]

Mr. Johnson: So stipulated.

The Court: By an indictment, filed in this court January 19, 1949, No. 20507, the grand jury charges that the defendant Robert L. Cannon, a male person within the class required to register for selective service under the Selective Service Act of 1948, on or about September 9, 1948, and at all times there-

after, in Los Angeles County, California, within the Central Division of the Southern District of California, did knowingly fail and neglect to perform a duty required of him under said Act and the regulations promulgated thereunder in that he knowingly failed and neglected to register as required by said Act and regulations.

By his plea of not guilty, the defendant has placed in issue the allegations of the indictment, and you have been impaneled and sworn as jurors to try the cause.

Does the government wish to make an opening statement?

Mr. Johnson: Yes, your Honor.

Ladies and gentlemen of the jury, counsel for the government desires to make a brief statement. I think that the indictment itself, as Judge Mathes has read it to you, contains, in itself, the elements of the crime. And, as the Judge stated, in this case the only things that are in issue are the allegations contained in the indictment.

What I am about to say is not evidence but is merely or mainly to help you in analyzing the case as you go along. [3]

If you consider the indictment which the Judge just read to you, you will see that there are two elements of the crime charged in this case and they are, first, a duty required of the defendant under the Selective Service Act of 1948, namely, registering as required by that Act and regulations issued thereunder. I think all of you probably realize

that the Selective Service Act of 1948 was passed in 1948 and that it has to do with the drafting of male citizens into the armed forces, during what Congress regarded as somewhat of an emergency.

The other element of the offense charged is that the defendant knowingly failed and neglected to register as that Act did require of him.

The government will proceed to bring forth evidence to prove those two points and, of course, will limit itself to those issues because those are the issues in this case and we believe the only issues. I thank you.

The Court: Does the defendant wish to make an opening statement?

Mr. Randles: I believe not, your Honor.

The Court: Very well. You may call the first witness on behalf of the government.

Mr. Johnson: Your Honor, I would like to submit some documents to be marked for identification at this time in the order that they are presented.

The Court: You may. [4]

The Clerk: A document, purporting to be a certified copy of birth record of Robert Lawrence Cannon, recorded in Book 157, page 465, of the Records of Alameda County, California, is Exhibit 1. Exhibit 2 for identification is a letter purporting to be signed "Robert L. Cannon," addressed to Central Draft Registration Center, 1206 South Santee Street, Los Angeles, California, dated September 5, 1948. Exhibit 3 for identification is a three-page handwritten statement, purporting to

be signed "Robert Lawrence Cannon." Exhibit 4 for identification purports to be a letter, dated September 27, 1948, to Walter H. Henderson, care of Director of Selective Service, 1209 Eighth Street, Sacramento 14, California, purporting to be signed "Robert L. Cannon."

Mr. Johnson: At this time the government offers in evidence a document marked Government's Exhibit No. 1 for identification, by stipulation with counsel for the defendant that it is what it purports to be.

The Court: A birth certificate?

Mr. Johnson: Yes, your Honor.

The Court: Do you stipulate it to be a genuine copy of the defendant's birth certificate?

Mr. Randles: Yes, your Honor.

The Court: Very well. It will be received in evidence as Plaintiff's Exhibit 1.

The Clerk: So marked. [5]

Mr. Johnson: Your Honor, may I state the substance of this to the jury?

The Court: You may pass it to the jury or state the substance of it.

Mr. Johnson: Government's Exhibit No. 1 purports to be a certified copy of the birth record of a child, Robert Lawrence Cannon, born in Alameda County, Oakland, California; father of child, Lawrence E. Cannon; mother of child, Edyth M. Marston; date of birth, January 19, 1926, 6:00 a.m. I will pass it to the jury.

At this time the government calls Myrtle Winchester.

MYRTLE WINCHESTER

called as a witness on behalf of the government,
being first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Myrtle Hayes Winchester.

Direct Examination

By Mr. Johnson:

Q. Mrs. Winchester, where do you reside?

A. My home address is 1411 North Fuller Avenue.

Q. And what is your occupation?

A. I am a coordinator of Local Board D, Selective Service System.

Q. And where is your office located in that capacity?

A. My office is at 1206 Santee Street, Los Angeles. [6]

Q. What, generally speaking, are the duties of that position?

Mr. Randles: If the court please, may I interrupt for just a moment?

Counsel, if it is for the purpose of establishing the fact that the defendant did not register, we will so stipulate for the purpose of saving time.

Mr. Johnson: Very well.

The Court: The stipulation, as I understand, is that the defendant has never registered under the Selective Service Act of 1948?

Mr. Randles: That is right.

(Testimony of Myrtle Winchester.)

The Court: Do you accept the stipulation?

Mr. Johnson: Yes, your Honor.

The Court: The jury will understand it is agreed as a fact that the defendant has never registered under the Selective Service Act of 1948. Is there anything further from this witness?

Mr. Johnson: Here is a letter that the witness received, and I thought perhaps we could get that in at this time.

Mr. Randles: Counsel, I will stipulate—it was sent to the witness, was it?

Mr. Johnson: Yes.

Mr. Randles: I will stipulate to it and that you may read it to the jury. [7]

Mr. Johnson: The government offers in evidence Government's Exhibit No. 2 for identification.

The Court: It will be received in evidence pursuant to the stipulation.

The Clerk: So marked.

Mr. Johnson: I will read it to the jury. It is a typewritten letter. "417 East 30 Street, Los Angeles 11, Calif. September 5, 1948. Central Draft Registration Center, 1206 South Santee Street, Los Angeles, Calif.

"Dear Sirs:

"This to notify you that I am refusing to register for the draft. My conscience, nurtured in the Christian doctrine of love, non-violence, and forgiveness will not permit me to align myself with the

(Testimony of Myrtle Winchester.)

Selective Service system, which I consider unjust and un-Christian.

Signed, Robert L. Cannon. Age, 22 years."

The "Robert L. Cannon" is the signature and typewritten is "Robert L. Cannon, 417 East 30 Street, Los Angeles 11, Calif."

The government has no further questions in that case of the witness.

The Court: The witness may step down.

Mr. Johnson: May the witness be excused?

Mr. Randles: Yes.

Mr. Johnson: That is all, Mrs. Winchester. Will counsel [8] stipulate as to this document?

Mr. Randles: Yes, sir.

Mr. Johnson: The stipulation of counsel for the defendant is to the effect that Government's Exhibit No. 3 for identification is a statement taken voluntarily from the defendant, by authority of the Federal Bureau of Investigation. We offer said exhibit or said document in evidence.

The Court: What is the number of the exhibit?

Mr. Johnson: No. 3.

Mr. Randles: No objection.

The Court: Very well. It may be received pursuant to that stipulation. May it?

Mr. Randles: Yes, sir.

The Court: Exhibit 3 for identification is received in evidence.

Mr. Johnson: I will read it to the jury, your Honor.

(Testimony of Myrtle Winchester.)

The Court: You may.

Mr. Johnson: "Page 1," a handwritten statement, "I, Robert Lawrence Cannon, having been previously advised by Special Agents Joseph Backus and Henry C. Johnson of the Federal Bureau of Investigation, whose credentials as such were exhibited by them to me, that I do not have to make this or any statement, that the statement can be used against me in court, and that I have the right to be represented by legal counsel, make the following statement freely and voluntarily [9] without any threats or promises having been made to me.

"I presently reside at 417 E. 30th St., Los Angeles. I have resided here since 1939. I am a native-born U. S. citizen. I was born Jan. 19, 1926, Oakland, California. My parents were Edith Dotson, deceased, and Lawrence Cannon. I knowingly and intentionally did not register for Selective Service under the Selective Service Act of 1948 either on the dates provided for my registration or at any time since. I was at the time designated for my registration aware of and acquainted with the provisions of the Selective Service Act requiring me to register. I also was and am aware of the provisions of the Act in regard to ministers and conscientious objectors.

"I have at all times refused and still continue to refuse to register for Selective Service under the present Act of 1948. I am not nor have I ever been a member of any of the Armed Forces of the

(Testimony of Myrtle Winchester.)

U. S. About Sept., 1944 I registered for Selective Service under the Act of 1940 at the Local Draft Board located on S. Hill St., Los Angeles, between Adams and 29th Sts. I was given a 4-F Classification because of a tumor on my right knee which has since been removed. I presently am not aware of any physical defects or disabilities which would exempt me from military service. My civil status is single and I do not have any dependents.

"I feel that the Selective Service Act of 1948 is unjust [10] and un-Christian and for that reason I refuse to register, although I realize that I am one of the persons whom the law requires to register.

"I have read this statement which consists of this page, a preceding page, and a page following, which bears my signature, all of which I have initialed and declare that this statement is the truth and incorporates the substance of my statements to the above Special Agents of the F. B. I. I have made this statement freely and voluntarily without any threats or promises having been made to me. I am aware of the fact that I do not have to make this statement, that it can be used against me in court, and that I have a right to be represented by legal counsel."

Signed, "Robert Lawrence Cannon, January 5, 1949, Los Angeles, Calif.

"Witnessed: Henry C. Johnson, Special Agent of the Federal Bureau of Investigation.

(Testimony of Myrtle Winchester.)

“Joseph B. Backus, Special Agent of the Federal Bureau of Investigation.”

With the stipulation of counsel for the defense that Government’s Exhibit No. 4 for identification represents a letter written by the defendant to Walter H. Henderson of the Selective Service authorities in Sacramento, California, the government offers in evidence Exhibit No. 4.

The Court: Does counsel so stipulate? [11]

Mr. Randles: Yes, your Honor.

The Court: Very well. Exhibit 4 for identification is received in evidence.

Mr. Johnson: I will read this to the jury, your Honor.

The Court: You may.

Mr. Johnson: “417 East 30th Street, Los Angeles 11, Calif. September 27, 1948.

“Walter H. Henderson, care Director of Selective Service, 1209 Eighth Street, Sacramento 14, Calif.

“Re: 2-7.

“Dear Mr. Henderson:

“Thank you for your letter and the advice rendered. I have no intention, however, of altering my position, i.e., of refusing to register for the draft. I am quite aware of the possible consequences of my action. But as a Christian who believes it mandatory to put into daily practice the teachings of Jesus, I agree with Paul, who says we ought to obey

(Testimony of Myrtle Winchester.)

God rather than man.

“Thank you again.

“In His service,

“Robert L. Cannon,” with the signature.

The government rests, your Honor.

Mr. Randles: Will the defendant take the stand, please? [12]

ROBERT L. CANNON

the defendant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: Robert Lawrence Cannon.

Direct Examination

By Mr. Randles:

Q. Mr. Cannon, you are the defendant in this action? A. Yes.

Q. You have heard the letters that have been read here, that you wrote? A. I have.

Q. You wrote those letters? A. I did.

Q. In those letters you stated that you did not expect to register for the Selective Service draft——

A. Yes.

Q. ——for universal military training?

A. That is right.

Q. What was your reason for not registering?

A. I consider the Selective Service Act an im-

(Testimony of Robert L. Cannon.)

moral act because it is designed to train people in the art of killing other people. Because I claim allegiance to God, as revealed through Jesus Christ, I felt that I couldn't align myself with any part of it, at any step, and that I could not register, [13] and that I owe my higher allegiance to the will and purpose of God, as I understand it so far.

Q. Do I understand you did this after considered thought? A. Yes.

Q. How long did you contemplate upon this matter before you decided?

A. I thought about it during the time that I was registering for the 1940 Act. The only reason I didn't refuse to register for that Act was because I didn't think I was inwardly prepared to face any of the consequences, and I didn't at that time feel that the Act was wrong.

Q. Was it within the exercise of your religious idealism that you failed to register?

A. Yes; but it was more than that. I exercised my religious idealism and, also, the desire to live by the code of ethics set forth by Jesus as best as possible at this point.

Mr. Randles: Take the witness.

Cross-Examination

By Mr. Johnson:

Q. Mr. Cannon, how old are you now?

A. 23.

Mr. Johnson: May the record show—it is a small

(Testimony of Robert L. Cannon.)

point but I don't believe "Universal Military Training Act" is the proper designation for the present Act, under the indictment as drawn. [14]

Mr. Randles: You may be correct.

Q. (By Mr. Johnson): You have stated that you didn't at the time of your first registration feel that that particular Act, that is, the one that was in effect in 1943—was it—that you didn't feel that that was wrong. Can you explain why you thought that was not wrong as against the present Act which you say you do think is wrong?

A. It wasn't that I didn't feel the 1940 Act was not wrong. I felt that training for the purposes of killing was wrong. I would have asked for a C. O. classification but I knew I was probably going to be rejected because of this physical disability. I didn't think that the act of registration was of such importance that I should refuse at that point. So I registered.

Q. Why do you feel that it is wrong at this point, the mere act of registering?

A. Well, because I see things differently now. I have had a chance to think and study about it in the light of what I believe to be the will and purpose in life. And so I think that registering at this point is wrong. I do now and, if I were in the same position that I am now, when I was back at the time I was rejected, I wouldn't have registered for that Act, either.

Q. Are you aware of the fact that the Selective

(Testimony of Robert L. Cannon.)

Service Act of 1948 permits exemption from any kind of service at [15] all and, also, for non-combatant service to persons whose religious training and belief conflict with service in the Army?

A. Yes; I am.

Q. What would your position be should this country be invaded by a foreign power within the near future?

A. I don't know. It is hard to say. It is like asking me what would I do if I walked by a water heater and it exploded, that is, as I passed it, what would I do. I imagine I would have the same position, to try to hold to the law and ethics of Jesus as much as possible under the circumstances.

Q. As much as possible under the circumstances? What do you mean by that?

A. Just what I said. I can't tell you what the circumstances are since I don't know what the circumstances would be.

Q. Don't you regard your present position as a rather absolute one?

A. I don't understand you.

Q. Do you not regard your present position of refusing to register as a rather absolute one, which takes no regard of circumstances, whatever they may be?

A. No. I only recognize it as an absolute position in regard to the Selective Service Act of 1948.

Q. Do you understand why the Selective Service Act of [16] 1948 was reportedly enacted?

(Testimony of Robert L. Cannon.)

A. I think I do.

Q. You, then, at this time set yourself up, without regard to the will of the majority of the people, as expressed by Congress, as individually determinative of what your position should be, is that correct?

A. In regard to this specific Act?

Q. Yes. A. Yes.

Q. But your position is not so absolute that it could not change within a week or so should the country be invaded by a foreign power?

A. Oh, no; I don't think I would change any if Russia came over and started attacking us.

Q. I didn't mean any country.

A. Or any country. I think I would be absolute all the way down the line. I hope I would be.

Q. You are not sure of what your position would be, then? A. Under what circumstances?

Q. Under any circumstances other than the one now. A. No; not absolutely sure; no.

Q. In other words, your position as it now is is not entirely a firm one, is it?

A. Oh, yes; it is firm for this instance. [17]

Mr. Johnson: No further questions.

Mr. Randles: That is all, Mr. Cannon.

Mr. Johnson, I have other witnesses here who would simply be corroborative of the defendant's purpose, habits and characteristics. I doubt if they can add anything to the issues here involved. In the

interests of saving time, if you will stipulate that he did not register because of his exercise of his religion, I will rest.

Mr. Johnson: Well, do you say these particular witnesses would give testimony as to his good character?

Mr. Randles: Character, as to his habits, his religious habits.

Mr. Johnson: I am not sure that that would be any particular issue in this case.

Mr. Randles: That is why I am willing—if you will stipulate that he did not register because of his religious convictions, I will not call them.

Mr. Johnson: I think the government is prepared to stipulate that he might not have registered because of his religious convictions.

Mr. Randles: Thank you. That is all.

The Court: Do I understand the stipulation is that the reason why the defendant did not register and has not registered under the Selective Service Act of 1948 was because of his religious beliefs and convictions? [18]

Mr. Randles: Right.

Mr. Johnson: Yes, your Honor.

The Court: Very well. The jury will so understand.

Mr. Randles: Very well; that is all. The defense rests.

The Court: Any rebuttal?

Mr. Johnson: No, your Honor.

* * * *

The Court: Is it stipulated, gentlemen, that the jury has left the room and the defendant remains present?

Mr. Johnson: So stipulated, your Honor.

Mr. Randles: Yes, sir.

The Court: Normally, at this stage of the case, I would have read the copies of the instructions, prepared by you gentlemen, that I may give the jury, but I haven't had an opportunity to read the requests. There are to be requests by the defendant?

Mr. Randles: Yes, your Honor.

The Court: And I notice in the file some requests for the government. Is the defendant now filing some requests?

Mr. Randles: Yes, sir. I have served a copy on counsel.

The Court: That will be satisfactory. Under Rule 30, I believe it is incumbent upon me to advise you of my intended action upon the requests. I will examine these requests during [19] recess and, upon reconvening, I will discuss the instructions with you. We will take a recess for five minutes.

(Short recess.)

The Court: Is it stipulated that the defendant is present and the jury is absent?

Mr. Johnson: So stipulated, your Honor.

Mr. Randles: So stipulated, your Honor.

The Court: I expect to give the substance of all of the defendant's requested instructions. They

may be modified in some particulars but I will give the substance of all of them, that is, the instructions numbered 1 to 13 inclusive. I propose to give Government's requested instructions, at least the substance of them, A, B, C, D, E, F, G, H, and I.

Mr. Randles: If your Honor please, is it proper at this time to object to some of the government's instructions?

The Court: Yes; I would like to hear any objections although, under a recent decision by the Circuit Court of Appeals, it is necessary to make the objection again after the charge has been given to the jury, and that opportunity will be afforded you outside of the presence of the jury and before they retire. If you wish to make any objection now, you may do so.

Mr. Randles: My objection was, your Honor, to instruction H. I think that is too broad.

The Court: Is it your view that the defendant's religious [20] training and belief is an issue in the case?

Mr. Randles: Yes.

The Court: I take it that it is the defendant's position that the law as applied to him is unconstitutional because it, as applied to him, is an Act which prohibits the free exercise by him of his religious beliefs?

Mr. Randles: That is right.

The Court: And the record may so show, and the trial court intends it to be the defendant's position throughout the case that the statute as applied to

this defendant would amount to an unconstitutional deprivation of his free exercise of religion and, as such, would violate the First Amendment to the Constitution.

Mr. Randles: Yes.

The Court: I believe that will be sufficient to preserve the point throughout the case.

Mr. Randles: I think it is.

The Court: But I think it would be well for you to renew the objection on that ground to any and all instructions you desire to object to, after the charge is given to the jury.

Mr. Randles: Thank you.

Mr. Johnson: "H" will go in, then, your Honor?

The Court: The substance of "H." I am just indicating the instructions I will give. And I, J and K, and I will [21] also give some other instructions.

Mr. Johnson: Your Honor, the government objects to Instruction No. 1 on the part of the defendant, feeling that that again touches upon the constitutional issue and that it will only serve to confuse the issues of this case which, we submit, are the two stated in the argument and in one of the instructions, or the opening statement.

The Court: I expect to instruct the jury that this statute as applied to the defendant is not an unconstitutional deprivation of the free exercise of religion.

Mr. Johnson: That would, of course, remove our objection to No. 1.

The Court: The defendant, I take it, wants an instruction along those lines so the record will be clear that the constitutional question is in the case.

Mr. Randles: Yes, your Honor.

The Court: Are you ready to proceed with the argument now?

Mr. Johnson: Yes, your Honor.

(Opening argument, by Mr. Johnson, to the jury.)

(Argument, by Mr. Randles, to the jury.)

(Closing argument, by Mr. Johnson, to the jury.)

(Whereupon, an adjournment was taken until 9:30 o'clock a.m., Thursday, June 2, 1949.) [22]

Thursday, June 2, 1949, 9:30 A.M.

(The following proceedings took place in the absence of the jury:)

(Case called by clerk.)

Mr. Randles: If your Honor please, I have two additional instructions I would like to present to the court.

The Court: Very well. Will you hand the requested instructions to the clerk?

Mr. Johnson: To both of which the government objects. We have seen them.

The Court: The court will refuse defendant's requested instructions 14 and 15, which have just been filed.

Mr. Randles: If your Honor please, I understand under the Rules of court we should take exception to the refusal of the court to give instructions.

The Court: Yes, but only after the charge has been given, prior to the time the jury retires. After the jury has been instructed, I will afford you an opportunity, by excusing the jury and outside of the presence of the jury, to take exceptions and make objections that you or the other side may wish to take.

Are you ready to have the jury brought in?

Mr. Randles: Yes, sir.

Mr. Johnson: Yes, sir, your Honor. [23]

The Court: Is it stipulated, gentlemen, that the jury and the defendant are present?

Mr. Johnson: So stipulated, your Honor.

Mr. Randles: So stipulated.

INSTRUCTIONS TO THE JURY

The Court: Members of the jury, you have heard the evidence and the argument. Now it is the duty of the court to instruct you as to the law governing the case. It is your duty, as jurors, to follow the law as stated in the instructions of the court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Regardless of any opinion you may have as to

what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the public expect that you will carefully and impartially consider [24] all the evidence, follow the law as stated by the court and reach a just verdict, regardless of the consequences. [25]

* * *

Section 453 of Title 50 of the United States Code provides in part that:

“ . . . it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.”

Proclamation No. 2799, issued July 20, 1948, by the President of the United States, provides in part that:

1. The registration of male citizens of the United States and other male persons residing in the United States who shall have attained the eighteenth anniversary of the day of their birth and who shall have not attained the twenty-sixth [34] anniversary of the day of their birth shall take place . . . between the hours of 8:00 a.m. and 5:00 p.m. on the day or days hereinafter designated for their registration, as follows: * * *

(e) Persons born in the year 1926 shall be registered on Wednesday, the 8th day of September, 1948, or on Thursday, the 9th day of September, 1948.

* * *

2. (a) Every male citizen of the United States . . . who shall have attained the eighteenth anniversary of the day of his birth and who shall have not attained the twenty-sixth anniversary of the day of his birth on the day or any of the days fixed herein for his registration is required to and shall on that day or any of those days present himself for and submit to registration before a duly designated registration official or selective service local board having jurisdiction in the area in which he has his permanent home or in which he may happen to be on that day or any of those days.

* * *

3. Every person subject to registration is required to familiarize himself with the rules and regulations governing registration and to comply therewith." [35]

Section 462(a) of Title 50 of the United States Code provides in part that:

“Any . . . person charged . . . with the duty of carrying out any of the provisions of . . . (the Selective Service Act of 1948), or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, . . . or who otherwise evades or refuses registration . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this (Act), or rules, regulations or directions made pursuant to this Act . . .” shall be guilty of an offense.

The Selective Service Act of 1948 was passed by the Congress of the United States pursuant to authority granted by the Federal Constitution to provide for our national defense.

You are not to be concerned with the wisdom or desirability of the Selective Service Act of 1948. It is the law of the land and, as jurors, you must be governed by it and apply it in arriving at an impartial verdict in this case.

Persons who, by reason of religious training and belief, are conscientiously opposed to participation in war in any [36] form, including duly ordained ministers of religion and students preparing for the ministry, are not exempted from registration under the Selective Service Act of 1948.

Once they are registered, however, such persons may be exempted from training and service under

the Act. In this connection Section 456(j) of Title 50 of the United States Code provides in part that: "Nothing contained in (the Selective Service Act of 1948) . . . shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

But in order to avail themselves of such exemption from training and service, the law provides that conscientious objectors must first register as required by the Act.

Thus, there are two essential elements of the offense charged in the indictment:

First: Whether the defendant was, at the time and place alleged in the indictment, a male person within the class required to register for selective service under the Selective Service Act of 1948; and

Second: Whether the defendant knowingly failed and neglected to register as required by said Act and the regulations promulgated thereunder. [37]

As stated before, the burden is upon the prosecution to prove beyond all reasonable doubt every essential element of the crime charged.

You will note that the omission or failure to act charged in the indictment is alleged to have been "knowingly" done.

The purpose of adding the word "knowingly" to the statute was to insure that no one would be

convicted because of mistake or inadvertence or other innocent reason.

(Instruction 14-A)

The First Amendment to the Federal Constitution declares that:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The defendant's religious beliefs are within the protection of the First Amendment, but the mere requirement of registration under the Selective Service Act of 1948 does not unconstitutionally infringe the free exercise by the defendant of his religious beliefs. The United States has the constitutional power to require the registration of all male citizens between the ages of eighteen and twenty-six, as the [38] Selective Service Act of 1948 provides, and the exercise of such power in accordance with the Act does not constitute an abridgement of the freedom of religion of any person.

(Instruction 14-B.)

In the words of the late Mr. Justice Cardozo of the United States Supreme Court:

“Never in our history has the notion been accepted, . . . that acts . . . indirectly related to service in the camp or field are so tied to the

practice of religion as to be exempt, in law or in morals, from regulation by the state. . . .

“Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law.” [39]

The law of the United States permits the judge to comment to the jury on the evidence in the case. Such comments are only expressions of the judge’s opinion as to the facts; and the jury may disregard them entirely, since the jurors are the sole judges of the facts.

During the course of a trial, I occasionally ask questions of a witness, in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

It is the duty of the court to admonish an attorney who, out of zeal for his cause, does some-

thing which is not in keeping with the rules of evidence or procedure.

You are to draw no inference against the side to whom an admonition of the court may have been addressed during the trial of this case.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the court, and is not to be considered by the jury in arriving at an impartial verdict as to the guilt or innocence of the [40] accused.

The defendant is not on trial for any act or conduct not alleged in the indictment.

The verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

The attitude of jurors at the outset of their

deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion on the case or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may [41] become involved, and the juror may later hesitate to recede from an announced position even when shown it is incorrect. You are not partisans. You are judges—judges of the facts. Your sole interest is to ascertain the truth. You will make a worthwhile contribution to the administration of justice if you arrive at an impartial verdict in this case.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted and give it a reasonable and fair construction.

If the accused be proved guilty, say so. If not proved guilty, say so. Remember at all times that a defendant is entitled to acquittal if any reasonable doubt remains in your minds.

Remember also that the question before you can never be: will the government win or lose the case? The government always wins when justice is done, regardless of whether the verdict be guilty or not guilty.

If it becomes necessary during your deliberations to communicate with the court, you may send a note

by the bailiff. But bear in mind you are not to reveal to the court or any [42] person how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached an unanimous verdict.

Before I complete the instructions, we will take a brief recess.

(Recess.) [43]

(The jury thereupon retired.)

The Court: Is it stipulated, gentlemen, that the jury has left the room and the defendant remains present?

Mr. Johnson: So stipulated.

Mr. Randles: Yes, your Honor.

The Court: Have counsel for the government any objections to the instructions given?

Mr. Johnson: No, your Honor; no objections.

The Court: Have counsel for the defendant any objections or exceptions?

Mr. Randles: If the court please, we would like to take exception to Instruction 14-A and Instruction 14-B.

The Court: On the ground, as I understand it, that the defendant does contend that the requirements of registration under the Selective Service Act of 1948, as applied to him, do unconstitutionally infringe his right under the First Amendment to the Constitution, in the free exercise of his religion?

Mr. Randles: Yes, sir. And to Instruction 14-B

on the further grounds that the instruction is not an instruction as to the law of the case but, rather, an argument in upholding the government's indictment against the defendant.

The Court: Anything further?

Mr. Randles: No, your Honor. Well, by the way, yes. I would like to take an exception to the court's disallowing or refusing to give Instructions 14 and 15 as presented by [44] counsel for the defendant. I presume this is the correct way to do that.

The Court: Yes. As to the refusal of the court to give any requested instruction, you must specify reasons at this time if you desire to preserve an exception.

Mr. Randles: In other words, I will state at this time my reason for the exception?

The Court: For your exception to any omission as well as anything that may have been included in the charge.

Mr. Randles: Yes, sir. My reason for the exception is that it was an instruction embodying and having to do with certain stipulations which had been entered into by government's counsel and counsel for the defendant, and should be considered by the jury as taken without the issues of the case insofar as the stipulations go.

The Court: To the instructions refused, I take it you except on the ground that the refusal to give them is error because by the instructions themselves the jury has been told that the defendant's

refusal to register based upon his religious beliefs was not justified, because the requirement of the law, as applied to the defendant, constitutes an unconstitutional infringement upon the free exercise of his religion as set forth in the First Amendment?

Mr. Randles: Yes, your Honor.

The Court: I would not have given the instruction in the [45] language that Mr. Justice Cardozo did had it not been for the manner in which the case was argued to the jury. Sometimes it is desirable to state the law and to state the reason of the court in order to aid the understanding of the jury.

Are there any other objections?

Mr. Randles: No, your Honor.

The Court: Is it stipulated that the final instruction, No. 20, may be given without affording an opportunity for further objection? That is the instruction as to the verdict.

Mr. Randles: Yes, your Honor; so stipulated.

Mr. Johnson: So stipulated.

The Court: You have copies of it before you, have you not?

Mr. Randles: Yes, your Honor.

The Court: Are you ready to have the jury returned?

Mr. Johnson: Yes, your Honor.

Mr. Randles: Yes, your Honor.

The Court: Will you stipulate that the jury and the defendant are present?

Mr. Randles: So stipulated.

Mr. Johnson: So stipulated.

The Court: I will now conclude the instructions, ladies and gentlemen.

Upon retiring to the jury room, you will select one of your number to act as foreman. The foreman will preside over [46] your deliberations and be your spokesman in court.

A form of verdict has been prepared for your convenience.

“In the United States District Court, in and for the Southern District of California, Central Division.

“United States of America, plaintiff, v. Robert L. Cannon, defendant. No. 20507 Criminal.

“Verdict.

“We, the jury in the above-entitled cause, find the defendant, Robert L. Cannon, as charged in the indictment.

“Los Angeles, California, June, 1949.

“....., Foreman of the Jury.”

You will take this form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreman fill in, date and sign the form to state the verdict upon which you agree, and then return with your verdict to the court room.

Mr. Clerk, will you swear the bailiffs?

(Bailiffs sworn.)

The Court: Ladies and gentlemen, you will be in custody of the bailiffs who have just been sworn.

The exhibits which have been received in evidence—were there any exhibits?

The Clerk: Yes, your Honor; four.

The Court: Yes; I recall that. All exhibits which have been received in evidence and the instructions of the court and the copy of the indictment will be made available to you [47] if you request them. You will now retire to the jury room to deliberate upon your verdict. [47-a]

(The following instructions were requested by counsel for the defendant and refused by the court:)

(No. 14)

You are instructed that when a matter has been stipulated to by counsel representing the government and the defendant, it is no longer an issue in this case. In that connection, I would instruct that it has been stipulated to: First, that the defendant did not register under the Selective Service Act of 1948, and it has been further stipulated that his non-registration was because of his exercise of his religious convictions.

(No. 15)

The court further instructs you that because of the First Amendment of the Constitution of the United States, which, as heretofore you have been instructed, reads in part as follows:

“Congress shall make no law respecting an es-

tablishment of religion, or prohibiting the free exercise thereof,"

and it having been stipulated that this defendant's failure to register was due to the exercise of his religious motives, you are instructed that so far as this defendant is concerned, the Selective Service Act of 1948 is unconstitutional and you should bring in a verdict of not guilty. [48]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 15th day of July, A.D., 1949.

/s/ ROSS REYNOLDS,
Official Reporter.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 51, inclusive, contain the original Indictment; Defendant's Requested Instructions Nos. 14 and 15; Court's Instructions to the Jury; Verdict; Judgment and Commitment; Notice of Appeal; Stipulation re Record on Appeal and two Stipulations and Orders Extending Time to Docket Appeal and full, true and correct copy of minute order entered February 7, 1949 which, together with the original reporter's transcript of proceedings on June 1 and 2, 1949, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.40 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 6th day of October, A.D. 1949.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12374. United States Court of Appeals for the Ninth Circuit. Robert L. Cannon, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed October 7, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

ROBERT L. CANNON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

POINTS RELIED UPON IN APPEAL

Pursuant to rules of the above-entitled Court, appellant hereby presents his points to be relied upon in the above pending appeal:

A.

The Selective Service Act of 1948 as applied to this appellant is unconstitutional.

B.

Under the stipulation entered into between the appellant and counsel for appellee during the proceedings in the District Court, R.T., page 18, the Trial Court erred in refusing to give certain instructions requested by appellant, to-wit: Instruction No. 14 and Instruction No. 15, as set forth on page 48 of the Reporter's Transcript, and to which exception was duly taken as set forth on page 45 of the Reporter's Transcript.

C.

The Court erred in giving certain instructions which were given by the Court over the objection and exception by *by* counsel for appellant, said

instructions specifically being 14-a and 14-b, as set forth in Reporter's Transcript, at pages 38 and 39.

Respectfully submitted,

/s/ JAS. D. RANDLES,
Attorney for Appellant.

[Endorsed]: Filed Oct. 10, 1949.

[Title of Court of Appeals and Cause.]

NOTICE OF DESIGNATION OF PORTION
OF TRANSCRIPT TO BE PRINTED

To Paul P. O'Brien, Clerk of the above-entitled Court, and to Norman W. Neukom and Sander L. Johnson, attorneys for Appellee in the above-entitled matter:

You will please take notice that the Appellant in the above-entitled matter hereby designates the following portions of the reporter's transcript, in that certain proceedings entitled the United States of America vs. Robert L. Cannon, number 20507, Criminal, in the United States District Court, Southern District of California, Central Division, as being necessary for the review of said matter in the Court of Appeals, Reporter's Transcript from page 1 to page 24 through line 22 inclusive and from page 34, line 5 to end of Reporter's Transcript of proceedings; also Clerk's Transcript.

Respectfully submitted,

/s/ JAS. D. RANDLES,
Attorney for Appellant.

[Endorsed]: Filed Oct. 10, 1949.

